



State of California – The Natural Resources Agency

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DEPARTMENT OF FISH AND GAME

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May 18, 2011

Ms. Crystal Spurr, Staff Environmental Scientist
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825
Fax #: (916) 574-1885

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Broad Beach Restoration Project, SCH 2011041052, Los Angeles County

Dear Ms. Spurr:

The Department of Fish and Game (Department) has reviewed the Notice of Preparation (NOP) prepared by the California State Lands Commission (CSLC) of a Draft Environmental Impact Report (DEIR) for the Broad Beach Restoration Project (Project). The Trancas Property Owner's Association proposes to address the extensive erosion at Broad Beach in the City of Malibu, Los Angeles County, through beach and sand dune restoration. The proposed Project would include beach widening and replenishment using sand dredged and transported from an offshore source and/or transported from an onshore source, sand dune building and restoration, and burying of an existing temporary emergency revetment. The Project area is located west of Broad Beach Road (which runs parallel to Pacific Coast Highway) and is comprised of shoreline fronting approximately 109 homes, spanning from Lechuza Point to Trancas Creek.

The Department is California's Trustee Agency for fish and wildlife resources, holding these resources in trust for the People of the State pursuant to various provisions of the California Fish and Game Code (Fish & G. Code, §§ 711.7, subd. (a), 1802.). The Department submits these comments in that capacity under the California Environmental Quality Act (CEQA) (See generally Pub. Resources Code, §§ 21070; 21080.4.). Given its related permitting authority under the California Endangered Species Act (CESA) and Fish and Game Code section 1600 *et seq.*, the Department also submits these comments likely as a Responsible Agency for the project under CEQA (*Id.*, § 21069.).

The California Wildlife Action Plan, a recent Department guidance document, identified the following stressors affecting wildlife and habitats within the project area: 1) growth and development; 2) water management conflicts and degradation of aquatic ecosystems; 3) invasive species; 4) altered fire regimes; and 5) recreational pressures. The Department looks forward to working with the Lead Agency to minimize impacts to fish and wildlife resources with a focus on these stressors. Please let Department staff know if you would like a copy of the plan to review.

To enable Department staff to adequately review and comment on the project, we recommend the following information, where applicable, be considered during the preparation of the DEIR:

1. A complete, recent assessment of flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, and locally unique species and sensitive habitats (See Protocols for Surveying and Evaluating Impacts to

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Special Status Native Plant Populations and Natural Communities at:
<http://www.dfg.ca.gov/habcon/plant/>).

- a. A thorough recent assessment of rare plants and rare natural communities, following the Department's Guidelines for Assessing Impacts to Rare Plants and Rare Natural Communities.
 - b. A complete, recent assessment of sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use within the project area should also be addressed. Recent, focused, species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and U.S. Fish and Wildlife Service.
 - c. Endangered, rare, and threatened species to address should include all those species which meet the related definition under the CEQA Guidelines. (See Cal. Code Regs., tit. 14, § 15380.)
 - d. The Department's Biogeographic Data Branch in Sacramento should be contacted at (916) 322-2493 (www.dfg.ca.gov/biogeodata) to obtain current information on any previously reported sensitive species and habitats, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code. Also, any Significant Ecological Areas (SEAs) or Environmentally Sensitive Habitats (ESHs) or any areas that are considered sensitive by the local jurisdiction that are located in or adjacent to the project area must be addressed.
2. A thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. This discussion should focus on maximizing avoidance, and minimizing impacts.
- a. CEQA Guidelines, Section 15125(a), direct that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.
 - b. Project impacts should also be analyzed relative to their effects on off-site habitats and populations. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas are of concern to the Department and should be fully evaluated and provided. The analysis should also include a discussion of the potential for impacts resulting from such effects as increased vehicle traffic, outdoor artificial lighting, noise and vibration.
 - c. A cumulative effects analysis should be developed as described under CEQA Guidelines, Section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
 - d. Impacts to migratory wildlife affected by the project should be fully evaluated including proposals to remove/disturb native and ornamental landscaping and other nesting habitat for native birds. Impact evaluation may also include such elements as migratory butterfly roost sites and neo-tropical bird and waterfowl stop-over and staging sites. All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.6 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA.
 - e. Impacts to all habitats from City or County required Fuel Modification Zones (FMZ). Areas slated as mitigation for loss of habitat shall not occur within the FMZ.

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- f. Proposed project activities (including disturbances to vegetation) should take place outside of the breeding bird season (February 1- September 1) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). If project activities cannot avoid the breeding bird season, nest surveys should be conducted and active nests should be avoided and provided with a minimum buffer as determined by a biological monitor (the Department recommends a minimum 500-foot buffer for all active raptor nests).
3. A range of alternatives should be analyzed to ensure that alternatives to the proposed project are fully considered and evaluated. A range of alternatives which avoid or otherwise minimize impacts to sensitive biological resources including wetlands/riparian habitats, alluvial scrub, coastal sage scrub, should be included. Specific alternative locations should also be evaluated in areas with lower resource sensitivity where appropriate.
 - a. Mitigation measures for project impacts to sensitive plants, animals, and habitats should emphasize evaluation and selection of alternatives which avoid or otherwise minimize project impacts. Compensation for unavoidable impacts through acquisition and protection of high quality habitat elsewhere should be addressed with off-site mitigation locations clearly identified.
 - b. The Department considers Rare Natural Communities as threatened habitats having both regional and local significance. Thus, these communities should be fully avoided and otherwise protected from project-related impacts.
 - c. The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Department studies have shown that these efforts are experimental in nature and largely unsuccessful.
4. An Incidental Take Permit (ITP) from the Department may be required if the project, project construction, or any project-related activity during the life of the project will result in "take," as defined by the Fish and Game Code, of any species protected by CESA (Fish & G. Code, §§86, 2080, 2081, subd. (b), (c)). Early consultation with Department regarding potential permitting obligations under CESA with respect to the project is encouraged (Cal. Code Regs., tit. 14, § 783.2, subd. (b)). It is imperative with these potential permitting obligations that the DEIR includes a thorough and robust analysis of the potentially significant impacts to endangered, rare, and threatened species, and their habitat, that may occur as a result of the proposed project. For any such potentially significant impacts the document should also analyze and describe specific, potentially feasible mitigation measures to avoid or substantially lessen any such impacts as required by CEQA and, if an ITP is necessary, as required by the relevant permitting criteria prescribed by Fish and Game Code section 2081, subdivisions (b) and (c). The failure to include this analysis in the project DEIR could preclude the Department from relying on the document's analysis to issue an ITP without the Department first conducting its own, separate Lead Agency subsequent or supplemental analysis for the project (See, e.g., Cal. Code Regs., tit. 14, § 15096, subd. (f); Pub. Resources Code, § 21166). For these reasons, the following information is requested:
 - a. Biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA Permit.
 - b. A Department-approved Mitigation Agreement and Mitigation Plan are required for plants listed as rare under the Native Plant Protection Act.

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5. The Department opposes the elimination of watercourses (including concrete channels) and/or the canalization of natural and manmade drainages or conversion to subsurface drains. All wetlands and watercourses, whether intermittent, ephemeral, or perennial, must be retained and provided with substantial setbacks which preserve the riparian and aquatic habitat values and maintain their value to on-site and off-site wildlife populations. The Department recommends a minimum natural buffer of 100 feet from the outside edge of the riparian zone on each side of drainage.
 - a. The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) or a river or stream or use material from a streambed, the project applicant (or "entity") must provide written notification to the Department pursuant to Section 1602 of the Fish and Game Code. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration Agreement (LSA) is required. The Department's issuance of a LSA is a project subject to CEQA. To facilitate issuance of a LSA, if necessary, the DEIR should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA. Early consultation is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. Again, the failure to include this analysis in the project DEIR could preclude the Department from relying on the Lead Agency's analysis to issue a LSA without the Department first conducting its own, separate Lead Agency subsequent or supplemental analysis for the project.

MARINE IMPACTS

The Department's Marine Region recommends that the DEIR for the Project should address the following marine assessments and issues:

1. A marine biological assessment should encompass the marine flora and fauna within and adjacent to the project area, with particular emphasis upon identifying state or federally listed rare, threatened, or endangered species and California species of special concern. A focus should also be on locally unique, rare and sensitive marine species or habitats.
2. All marine species and habitat-specific surveys and/or studies should be conducted in conformance with established protocols at the appropriate time of year and time of day when the species are active or otherwise identifiable.
3. A thorough discussion of direct, indirect, and cumulative marine resource impacts is crucial for this proposed project because it lies within the proposed Point Dume State Marine Conservation Area (PDSMCA). The Department will be giving this proposed project increased scrutiny since it is within the PDSMCA. Specifically, the DEIR should include, at a minimum, the following information.
 - a. Discussions regarding the regional setting, pursuant to the CEQA Guidelines Section 15125(a), should be included with special emphasis on resources that are rare, sensitive or unique to the region. Emphasis should be given to habitats that are important to listed or sensitive species that may be affected by the Project. The project area includes

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intertidal and subtidal reef habitat, giant kelp (*Macrocystis pyrifera*), and surfgrass (*Phyllospadix* spp.). In addition, black abalone (*Haliotis cracherodii*), a federally endangered species, may occur in the project area. Trancas Creek mouth is near the project site and may support habitat for the tidewater goby, *Eucyclogobius newberryi*. Relatively flat wide beaches in this area have historically supported spawning California grunion (*Leuresthes tenuis*), Pismo clams (*Tivela stultorum*), and eelgrass (*Zostera* spp.), which may be found in the intertidal surf zone and/or the subtidal areas. Potential and expected impacts of the Project on these species and habitats should be fully addressed.

- b. Detailed discussions of potential direct or indirect burial and/or sedimentation, as well as turbidity impacts, to offshore marine resources from initial and subsequent sand replenishments should be included. Specifically, an analysis of cumulative impacts should be conducted of the proposed repetitive sand replenishments and of other similar projects that may be proposed for the Broad Beach area in the foreseeable future.
- c. Potential impacts to marine species related to dredging, moving, transporting, and piping of sand materials onto Broad Beach should be fully addressed.
- d. Perform a thorough survey of the proposed and alternative project footprints to describe all types of marine substrates, such as sandy beach, rocky reef, kelp bed, intertidal, subtidal, and other habitats that may be affected. Site maps and tables should be used in the DEIR to summarize survey information and should include square footage or acreage of various marine habitats that will be impacted.
- e. Mitigation and monitoring plans for impacts to marine resources and habitats should be included in the DEIR. Best management practices and avoidance measures for each construction activity should be included in mitigation plans. Such plans should also include conducting construction activities during low tide conditions to avoid marine waters, avoidance of sensitive habitats when locating pipes, and avoidance of spawning and/or nesting seasons when appropriate. All such plans should be drafted in consultation with the Department's Marine Region staff and other appropriate resource agencies.

Thank you for this opportunity to provide comments. Please contact Ms. Loni Adams, Marine Region, Environmental Scientist, at (858) 627-3985 if you should have any questions and for further coordination on the marine aspects of the proposed Project. Please contact Mr. Daniel Blankenship, South Coast Region Staff Environmental Scientist, at (661) 259-3750 if you should have any questions and for further coordination on the non-marine aspects of the proposed Project.

Sincerely,


Edmund Pert
Regional Manager
South Coast Region

cc: Helen Birss, Santa Barbara
Terri Dickerson, Laguna Niguel
Dan Blankenship, Valencia
Loni Adams, San Diego
Vicki Frey, Eureka
Scott Morgan, Sacramento, State Clearinghouse